

Independent Advocacy and the Care Act

January 2015



Easy read version

Words in **blue** are in the word list at the end of the paper.



Department
of Health

directors of
adass
adult social services

Local
Government
Association

VoiceAbility

Supporting implementation
of the Care Act 2014



Department
of Health

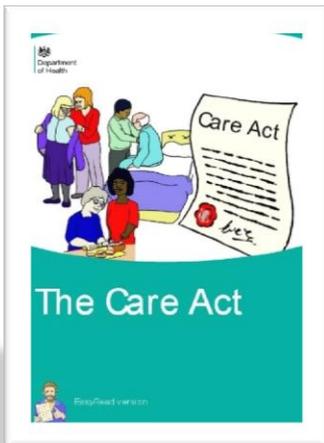


The Department of Health with the support of Voiceability have written this paper. It is to help the work of the Winterbourne View Joint Improvement Programme (JIP) and support its work on advocacy.

The JIP was set up after people at **Winterbourne View** hospital were abused.

It was set up to support local areas to make services better for people with a learning disability or autism with **behaviour that challenges** or a mental health problem so that less people need to go into **assessment and treatment units** like Winterbourne View.

This paper looks at independent advocacy in the **Care Act 2014**.



Introduction

The **Care Act** says that local councils must provide **independent advocacy** for more people from April 2015.

This means advocacy that is **independent of the council**.



When should a person get advocacy?

Councils **must** involve people in assessments about their care and support and in planning and checking their care and support.

The Care Act says that councils must think about if a person needs independent advocacy to support them to be involved for things like:

- When they are carrying out an **assessment** of an adult to see what care and support they might need (an adult's needs assessment)
- When they are carrying out an assessment to see if someone who provides care for someone else needs support (a carer's assessment)
- When they are carrying out an assessment of a child who is becoming an adult to see what care and support they might need (a child's needs assessment)
- When they are writing what is in an adult's care plan or checking what is in it
- When they are carrying out a **safeguarding** enquiry or a safeguarding adults review

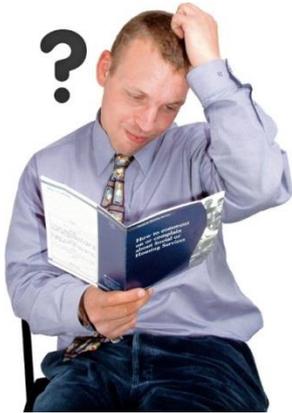




Who gets independent advocacy?

When the council is involving the person with any of these things they must think about whether the person would find it very difficult to:

- understand information about their care and support
- remember information
- use the information
- communicate their views or feelings



If the council think that a person would find it very difficult to do any of these things they must make sure that there is someone to support them.



They will look first at whether there is a family member or a friend who can help them take part. This person is called “**an appropriate individual**”.

If **not**, the council must arrange an **independent advocate** to support them.

Who can be an ‘appropriate individual’?



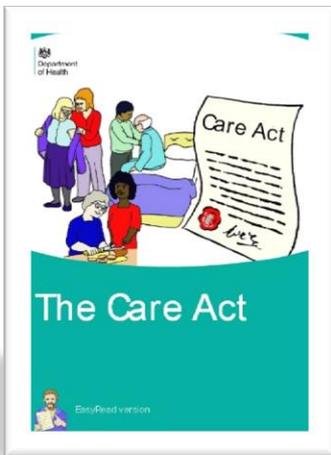
It must be someone the person **wants** to support them. It **cannot** be someone who is already providing care to the person as a professional or who is paid to do this.



Independent advocacy under the Mental Capacity Act and Mental Health Act

There are already laws which say that some people must be given an advocate.

The **Mental Capacity Act** means that some people can have an Independent Mental Capacity Advocate.



The **Mental Health Act** means that some people can have an Independent Mental Health Advocate if they want one.

The Care Act does **not** change these rights. The Act makes getting an independent advocate easier for some people who will not get one under these other laws.



In lots of local areas there is also some advocacy which is not there just because the law says it must be. It is there because people and local councils know that it helps people to have a voice and rights. This includes self-advocacy. The Care Act **does not** take away this advocacy.



What should an advocate do?

An advocate should support the person to say what they want and speak out about the things that matter to the person.

They should:

- help the person to **understand** what is happening when the council is looking at their care and support
- help the person to communicate what they **feel and want**
- help the person to make **decisions** and **challenge** decisions if the person wants this
- help the person to understand their rights.



The council must listen to friends or family when the person asks them to - even if the person has an advocate.

Advocacy and Transforming Care

People were badly abused at **Winterbourne View** hospital. Some of the things that we learned from what happened were used to help develop the things about independent advocacy in the Care Act. Advocacy can help stop abuse.





There is lots of working happening to make services better for people with a learning disability or autism with behaviour that challenges or a mental health problem after Winterbourne View.

The Government wrote a report called **Transforming Care** about the work that needs to happen. The changes under the Care Act are important to this work:

Making people think about independent advocacy

Advocacy is important for people who live in a setting like an assessment and treatment unit.



It is also important to help people avoid having to move to units like this.

The Act means that independent advocacy needs to be thought about when someone's care and support is being looked at.

This should mean that more people will get an independent advocate in places like assessment and treatment units as well as in the community.



People who are going into hospital

If a person will be in a hospital run by the National Health Service (NHS) (this includes

places like assessment and treatment units) for 28 days or more, or a care home for eight weeks or more, the council has to offer them independent advocacy for the reasons we have talked about in this briefing.

The difference is that they can do this even if the person **already** has someone to support them (an “appropriate individual”). They must do this if they think it would be a good thing for the person to have an advocate.

This is because moving into places like this can have a big effect on a person. They may need a lot of support to be involved as much as they want to be.

Family members may also feel that they are not being listened to. They may feel tired from supporting the person on their own.

All this means that the person could have an advocate as well as their family member involved and supporting them.

Other people who need support

Councils should still think about providing support for people who may **not** get an independent advocate under the new law. Even if people may be more able to be involved, or they may have a person to support them it can still be helpful for people to have advocacy.



This is important for people who need support at **other** times in their lives, who need long term advocacy support and people who can be supported to speak up through self-advocacy.



How can we make sure independent advocacy work well?

- Make sure people using services, family members, friends, carers and professionals know about the new rules about independent advocacy in the Care Act.
- Point out to the Council and **Clinical Commissioning Groups (CCGs)** those people who may have a right to an advocate when they have a care and support assessment, plan or review.
- Provide **training for staff** on the Care Act and independent advocacy.



Word list

Assessments

An assessment is the process of working out what a person's needs are. A community care assessment looks at how you are managing everyday activities such as looking after yourself, household tasks and getting out and about. You are entitled to an assessment if you have social care needs, and your views are central to this process.

Behaviour that challenges

This is when a person behaves in a way which can be hard for staff and services to deal with. It may put the person or other people at risk. There can be lots of different reasons for this. For example, some people may find it hard to communicate and this may be a way of telling people they are unhappy or not feeling well.

Care Act

This is a new law that tells councils and other groups how they should work with people who need care and support.

Clinical Commissioning Groups

This is the health organisation in a local area that plans and buys health services for that area.

Independent Advocacy

Advocacy is support for people so they can have their say. It can help make sure services and staff treat them well. **Independent Advocacy** is when it is separate from the council.

Mental Capacity Act

This is a law about helping people to make their own decisions. It protects the rights of people who cannot make their own decisions about some things. This may be because they have a learning disability or mental health problem.

Mental Health Act

This a law about the care and treatment of people who have a 'mental disorder'. This includes people with a mental health problem.

Safeguarding

This is when social workers and other professionals check on a person's care to make sure their health, wellbeing and rights are protected. It makes sure they live free from harm and abuse. A **safeguarding enquiry** happens when a local council needs to find out if someone is being abused or neglected. A **safeguarding adults review** is a way of checking whether the right things are being done to keep people safe.

Transforming Care

This report sets out the government's response to what happened at **Winterbourne View**. It has an **action programme** to change services.

Winterbourne View

This was an assessment and treatment unit (a type of hospital) where people with learning disabilities lived. Some staff at the hospital **hurt and abused** the people who lived there. This was against the law and the hospital is now closed.

There has been a big investigation into the hospital to find out how staff had been able to abuse patients and to make sure that it never happened again.

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